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Attorneys for Petitioner/Plaintiff,
Robert Yasmeh

FILED
2008 JAN -4 AM 11:50
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
B.Y. KNA DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Robert Yasmeh)

Petitioner/Plaintiff)

v.)

Michael B. Mulkasey, Attorney General)
of the United States, MICHAEL)
CHERTOFF, Secretary of the)
Department of Homeland Security;)
EMILIO T. GONZALEZ, Director)
of the United States Citizenship and)
Immigration Services;)
ALFONSO AGUILAR, Chief of Citizenship)
United States Citizenship and Immigration)
Services; PAUL M. PIERRE,)
District Director of the United States)
Citizenship and Immigration Services,)
San Diego, California;)
ROBERT S. MUELLER III, Director of)
the Federal Bureau of Investigation)

Respondents/Defendants)

Case No. **'08 CV 0024 H JMA**
A# 26-853-039

COMPLAINT FOR MANDAMUS

TO THE HONORABLE JUDGE OF SAID COURT:

Petitioner/Plaintiff Robert Yasmeh, through his attorney Ali Golchin, states as follows:

I. JURISDICTION

1. This action is brought to compel Respondents, and those acting under them, to adjudicate security clearances related to Petitioner's application for Naturalization under INA §310.

2. It is brought pursuant to 28 U.S.C. §§1331 and 1361 to redress the deprivation of rights, privileges and immunities secured to Plaintiff, by which statutes jurisdiction is conferred, and to compel Defendants to perform a duty Defendants owe to plaintiff. Jurisdiction is also conferred by 5 U.S.C. §§702 and 704.

II. PARTIES

3. PLAINTIFF entered the United States as a Jewish refugee from Iran in 1980. In 1985, he became a United States Legal Permanent Resident. He is eligible for naturalization under INA section 336. He resides in Bonita, San Diego County, California.

4. DEFENDANT, Michael B. Mulkasey, is the Attorney General of the United States. Pursuant to 8 U.S.C. §1103(a), he is charged with the overall responsibility for the administration and enforcement of the Immigration and Nationality Act, including a timely adjudication of rights and benefits extended by statute. He is sued in his official capacity.

5. DEFENDANT, MICHAEL CHERTOFF, is the Secretary of the Department of Homeland Security (DHS) and is responsible for the administration of the immigration laws. He is sued in his official capacity.

6. DEFENDANT, Dr. EMILIO T. GONZALEZ, is the Director of the United States

Citizenship and Immigration Services ("USCIS"). He is responsible for administration of immigration laws throughout the United States. He is sued in his official capacity.

7. DEFENDANT, ALFONSO AGUILAR, is the Chief of Citizenship for the United States Citizenship and Immigration Services. He is sued in his official capacity.

8. DEFENDANT, PAUL M. PIERRE, is the District Director of the USCIS in San Diego, California. He has jurisdiction to adjudicate Petitioner's naturalization application and is sued in his official capacity.

9. DEFENDANT, ROBERT S. MUELLER III, is the Director of the Federal Bureau of Investigation, an agency in charge of conducting name checks for USCIS.

III. VENUE

9. Venue lies in the District Court for the Southern California District of California, the district where Petitioner, PLAINTIFF, resides and where he filed an N-400 application that has been unreasonably delayed because of pending security checks.

IV. FACTS

10. Plaintiff is an Iranian male born on July 7, 1967. He is a Jewish Iranian and entered the U.S. with his family in 1980 as a refugee when he was only 13. He became a Legal Permanent Resident of the United States on 10/01/1985.

11. Plaintiff has continuously resided and has been physically present in the United States since 1980. He has no criminal records here or abroad. He is statutorily eligible for Naturalization and deserves it as a matter of discretion.

12. On April 11, 2006, plaintiff filed his Naturalization (N-400) application with USCIS.

Plaintiff was issued an application number of WSC*001490748 and a fee receipt of \$400.00 after filing of his N-400 application.

13. Plaintiff was fingerprinted for Naturalization security checks on May 17, 2006.

14. Plaintiff still waits to be scheduled for his Naturalization interview. His interview has been delayed due to delay in his FBI name checks.

15. To this date, the USCIS has not completed its security checks and has not scheduled him for an interview.

16. The San Diego USCIS reports that it is currently adjudicating the naturalization applications within 7 months of filing. 20 months has passed since his application was filed.

18. Plaintiff has made several inquiries to both USCIS and to his local U.S. Representative as to the status of his case and was told that the security checks are pending and that there is nothing to be done but wait.

V. LEGAL ARGUMENT

19. The Respondents, in violation of the Administrative Procedures Act (5 U.S.C. §701 *et seq.*) are willfully or unreasonably refusing to take action. It is their duty to adjudicate Petitioner's application for Naturalization and to compel Federal agencies to complete the security checks.

20. Also under INA §336(b) the USCIS has a duty to adjudicate within 120 days,

"If there is a failure to make a determination under section 335 before the end of the 120-day period after the date on which the examination is conducted under such section, the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may

either determine the matter or remand the matter, which appropriate instructions, to the Service to determine the matter.

Here, more than 120 days has passed since the interview, which took place October 18, 2005.

21. Petitioner has been deprived of the peace of mind to which he is entitled under the Immigration and Nationality Act. He has dutifully paid taxes every year and obeyed all laws. He is a businessman and a Pharmacist and is married to a United States citizens. Mr. Yasmeh would like to ensure that he is always in the country and available for wife and family. He has lived in the United States since 1980. Furthermore, Petitioner has suffered from stress and anxiety as a result of not being able to serve on a jury or vote in the U.S. elections. For not being a U.S. citizen, Petitioner is restricted in his travels and must go through additional hardship of trying to obtain visas to travel to other countries, such as Europe and elsewhere. All his family members and relatives with the same last name have cleared security checks and have become naturalized U.S. citizens. This also has added anxiety and uncertainty in the Plaintiff's life as he and his relatives wonder why he has been singled-out and delayed for security checks.

22. Furthermore, the effects of 9-11 have made Petitioner insecure about his status in the United States. He would like to ensure that he will remain with his family here in the U.S. Petitioner strongly believes becoming a citizen will provide him with the security that he requires and deserves.

23. Respondents owe Petitioner the duty to accept his pending application and have unreasonably failed to perform that duty. Respondents have failed to provide legal authority as to why they are unreasonably delaying his application for Naturalization under INA.

24. Petitioner has exhausted his administrative remedies. Defendants' failure to act on

Petitioner's application is arbitrary and not in accordance with the law.

WHEREFORE, Petitioner prays that the Court:

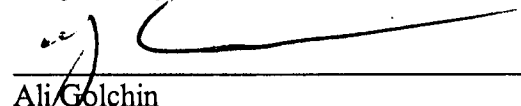
Compel Defendant's and those acting under them to complete the FBI name check without further delay, perform their duty to schedule Petitioner for his N-400 Naturalization interview.

Grant such other and further relief this court deems proper under the circumstances; and

Grant attorney's fees and costs of court under Equal Access to Justice Act (EAJA). 5
U.S.C §504; 28 U.S.C. §2412.

Dated: January 3, 2008

Respectfully Submitted,



Ali Golchin
Attorney for Petitioner /Plaintiff

Department of Homeland Security
 U.S. Citizenship and Immigration Services

I-797C, Notice of Action

UNITED STATES OF AMERICA

Receipt with Exception			NOTICE DATE April 24, 2006
CASE TYPE N400 Application For Naturalization			INS AW A 026 853 039
APPLICATION NUMBER WSC*601490748	RECEIVED DATE April 11, 2006	PRIORITY DATE April 11, 2006	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS ROBERT YASMEH 3875 COUNTRY TRAIL BONITA CA 91902		PAYMENT INFORMATION: Single Application Fee: \$400.00 Total Amount Received: \$400.00 Total Balance Due: \$0.00	
<p>The above application has been received by our office and is in process, but has been noted with one or more of the following exception(s):</p> <p>Missing Evidence(s) - your application was missing evidence(s) that you will need to provide at the time of your naturalization interview. You will be notified under separate notice of the necessary evidence(s) that you will be required to bring to your interview. Do not submit any evidence(s) by mail.</p> <p>Our records indicate your personal information is as follows: Date of Birth: July 07, 1967 Address Where You Live: 3875 COUNTRY TRAIL BONITA CA 91902</p> <p>Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.</p> <p>You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 365 days of this notice.</p> <p>IMPORTANT NOTICE: All naturalization applicants who were between the ages of 14-75 at the time of filing must have their fingerprints taken at an INS Application Support Center (ASC) so they can be submitted to the Federal Bureau of Investigation for a criminal history check. If we received your application without a fingerprint card (FD-258), or your fingerprint card was received on or after December 3, 1997, you will need to go to an ASC to be fingerprinted. Do not have your fingerprints taken anywhere else. You will receive a notice that will provide you with information about when and where to go to have your fingerprints taken, and what you will need to bring with you. Please inform the office listed below immediately of any address changes.</p> <p>If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.</p> <p>If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.</p> <p>If you have access to the Internet, you can also visit INS at www.ins.dhs.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.</p> <p>INS Office Address: US IMMIGRATION AND NATURALIZATION SERVICE CALIFORNIA SERVICE CENTER P.O. BOX 10400 LAGUNA NIGUEL CA 92607</p> <p>INS Customer Service Number: (800) 375-5283</p> <p>APPLICANT COPY</p> <p>WSC5001599242</p>			

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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Robert Yasmeh,

Plaintiff,

v.

Michael B. Mulkasey, Attorney General of the
United States, et al.,

Defendants.

Case No.:

INS No. 26-853-039

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 1251 Third Ave, Suite 203 Chula Vista, CA 91911.

I am not a party to the above-entitled action. I have caused service of:

1) PLAINTIFF COMPLAINT FOR MANDAMUS

on the following party by PERSONALLY filing the foregoing with the Clerk of the District Court :

Karen P. Hewitt, U.S. Attorney
SAMUEL W. BETTWEY, Assistant to U.S. Attorney

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service first class mail to the following non-ECF participants on the case:

Karen P. Hewitt, U.S. Attorney
SAMUEL W. BETTWEY, Assistant to U.S. Attorney
880 Front St. Rm 6293
San Diego, CA 92101-8893

the last known address, at which the place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 4, 2008


Ali Golchin

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Robert YASMEH

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

San Diego

DEFENDANTS

Michael B. Mulkasey

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

San Diego/US Gov

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Ali Golchin, Esq.
Golchin & Associates 1251 Third Ave Ste 203
Chula Vista, CA 91911

ATTORNEYS (IF KNOWN)

08 CV 0024 H JMA

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff • 3 Federal Question
(U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant • 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PT	DEF		PT	DEF
Citizen of This State		<input checked="" type="checkbox"/>	Incorporated or Principal Place of Business in This State	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Citizen of Another State	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Incorporated and Principal Place of Business in Another State	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Citizen or Subject of a Foreign Country	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	Foreign Nation	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

COMPLAINT FOR MANDAMUS 28 USC § 1361, 1331

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<ul style="list-style-type: none"> 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veterans Benefits 160 Stockholders Suits 190 Other Contract 195 Contract Product Liability 	<p>PERSONAL INJURY</p> <ul style="list-style-type: none"> 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury <p>PERSONAL INJURY</p> <ul style="list-style-type: none"> 362 Personal Injury-Medical Malpractice 365 Personal Injury - Product Liability 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <ul style="list-style-type: none"> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability 	<ul style="list-style-type: none"> 610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC881 630 Liquor Laws 640 RR & Truck 650 Airline Regs 660 Occupational Safety/Health 690 Other <p>LABOR</p> <ul style="list-style-type: none"> 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 730 Labor/Mgmt. Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act 	<ul style="list-style-type: none"> 422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 <p>PROPERTY RIGHTS</p> <ul style="list-style-type: none"> 820 Copyrights 830 Patent 840 Trademark <p>SOCIAL SECURITY</p> <ul style="list-style-type: none"> 861 HIA (13958) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(a)) <p>FEDERAL TAX SUITS</p> <ul style="list-style-type: none"> 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS - Third Party 26 USC 7609 	<ul style="list-style-type: none"> 400 State Reappointment 410 Antitrust 430 Banks and Banking 450 Commerce/ICC Rates/etc. 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 810 Selective Service 850 Securities/Commodities Exchange 875 Customer Challenge 12 USC 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<ul style="list-style-type: none"> 210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Tort to Land 245 Tort Product Liability 290 All Other Real Property 	<ul style="list-style-type: none"> 441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 440 Other Civil Rights 	<ul style="list-style-type: none"> 510 Motions to Vacate Sentence Habeas Corpus 530 General 535 Death Penalty <input checked="" type="checkbox"/> 540 Mandamus & Other 550 Civil Rights 555 Prisoner Conditions 		

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding • 2 Removal from State Court • 3 Remanded from Appellate Court • 4 Reinstated or Reopened • 5 Transferred from another district (specify) • 6 Multidistrict Litigation • 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

• CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: • YES • NO ☒

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE 1/4/08

SIGNATURE OF ATTORNEY OF RECORD

PAID # 350 1/4/08 B4 KORT # 146134

::ODMANPCDOCS\WORDPERFECT\22816\1 January 24, 2000 (3:10pm)

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

**# 146134 - BH
* * C O P Y * *
January 04, 2008
11:59:08**

Civ Fil Non-Pris

USAO #: 08CV0024 CIVIL FILING

Judge.: MARILYN L HUFF

Amount.: \$350.00 CK

Check#: BC# 6193

Total-> \$350.00

FROM: CIVIL FILING
YASMEH V. MULKASEY